

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the)	CC Docket No. 96-115
Telecommunications Act of 1996)	
)	
Telecommunications Carriers' Use)	
of Customer Proprietary Network)	
Information and Other Customer)	
Information;)	
)	
Implementation of the Non-Accounting)	CC Docket No. 96-149
Safeguards of Section 271 and 272 of the)	
Communications Act of 1934, As Amended)	
_____)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), on behalf of its operating subsidiaries, hereby respectfully submits its comments on the *Third Further Notice of Proposed Rulemaking*, FCC 02-214 (released July 25, 2002) (*Third FNPRM*) in the above-captioned proceeding.¹ Sprint's comments here are limited to (1) the Commission's request to refresh the record on the issue of what if any "safeguards...are needed to protect the confidentiality of carrier proprietary information (CPI) including that of resellers and ISPs," *Third FNPRM* at ¶145; and (2) the Commission's request for comments "on carrier use and disclosure of CPNI [Customer Proprietary Network Information] when its sells assets or goes out of business." *Id.* at ¶146.

¹ The *Third FNPRM* was issued as part of the Commission's *Third Report and Order* in this proceeding.

I. THERE IS NO NEED FOR COMMISSION TO PROMULGATE SAFEGUARDS TO PROTECT THE CONFIDENTIALITY OF CPI.

The language of Sections 222(a) and (b) of the Act regarding carrier proprietary information is unequivocal. "Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers ... including telecommunications carriers reselling telecommunications services provided by a telecommunications carrier." 47 U.S.C. §222(a). Moreover, "[a] telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications services shall use such information only for such purpose, and shall not use such information for its own marketing efforts." 47 U.S.C. §222(b). Previously, Sprint argued that, despite such clear language, the Commission needed to prescribe a number of safeguards to ensure that carriers complied with their duties under Sections 222(a) and (b).² With the passage of time and the fact that the absence of a Commission prescribed regulatory structure for the protection of CPI has not had any untoward effects, Sprint no longer believes that Commission prescribed safeguards are necessary for the protection of CPI.

² See Sprint's Comments filed March 30, 1998 at 5-9 and Sprint's Reply Comments filed April 14, 1998 submitted in response to the *Second FNPRM*, 13 FCC Rcd 8061 (1998) in this proceeding. Sprint's position at the time was primarily influenced by the fact that Pacific Bell had begun to use -- or better put, misuse -- information supplied by Sprint and other IXCs under their billing and collection agreements with Pacific Bell for its own marketing purposes. Sprint and the other IXCs sued Pacific Bell in United States District Court for the Northern District of California and obtained an order (which is not published) preventing Pacific Bell from misappropriating such information. The favorable decision, however, was based upon a misappropriation of trade secrets and not a violation of Section 222(b). Sprint was also concerned that as the RBOCs were granted authority to provide in-territory interexchange service pursuant to Section 271 of the Act, they would seek to exploit whatever advantages they would have including access to commercially sensitive data of their IXC competitors. With the benefit of experience, it appears that Sprint's concerns here have not materialized to any significant degree.

Sections 222(a) & (b) are self-executing; there is nothing in Section 222 that requires the Commission to establish a regulatory structure to ensure that carriers protect the CPI of their carrier customers; and, carriers are able to -- and do -- act to ensure the protection of their proprietary information in the agreements that they negotiate with other carriers for facilities and services used in or related to the provision of telecommunications services. Of equal importance, since the issuance of the *Second FNPRM*, the Commission has implemented the Accelerated Docket which requires that qualifying complaints such as those likely to affect competition in the telecommunications market be heard and resolved on an expedited basis. *See* 47 CFR §1.730 *et seq.* Given the fact that the preservation of competition is furthered by protecting competitively-sensitive information of carriers, *Second FNPRM* 13 FCC Rcd at 8201 (¶206), the attempted misappropriation of a carrier's CPI by another carrier that obtained such information because of its provision of facilities and services would almost certainly qualify for expedited consideration under the Commission's Accelerated Docket procedures.

In any event, Sprint is unaware of any decision in a formal complaint proceeding issued by the Commission in the nearly 7 year period since the enactment of Section 222 in which a carrier was found to have violated its duties under Sections 222(a) & (b). This suggests that carriers are fully aware of their responsibilities under Section 222 and take those responsibilities seriously. Sprint, of course, does not minimize the possibility that some carrier or carriers will abuse their access to the CPI of their carrier-customers. Nevertheless, Sprint believes that the Commission, in Accelerated Docket proceedings conducted pursuant to Section 208 of the Act, or the courts can be relied upon to deal with such abuses in an efficacious manner. There is simply no need -- and certainly on a cost/benefit analysis, no justification -- for the Commission

to establish a regulatory "solution" to a "problem" that thus far history has shown is practically non-existent.

II. A CARRIER EXITING THE MARKET SHOULD BE REQUIRED TO PROVIDE THE CPNI OF ITS CUSTOMERS TO THE ACQUIRING CARRIER TO ENSURE A SEAMLESS TRANSFER.

Sprint supports a requirement that when a carrier agrees to acquire the customer base of a carrier that is exiting the market because of bankruptcy or other reason, the exiting carrier should be required to disclose the CPNI of its customers to the acquiring carrier. Sprint firmly believes, based on the recent experiences of its local telephone subsidiary when it acquired the customers of bankrupt carriers, that such disclosure is in the public interest.³ The disclosure of CPNI under such circumstances would help ensure the seamless transfer of customers which, of course, is an important public interest goal since it reduces the possibility that the provision of phone service to the customers of the exiting carrier would be disrupted. Moreover disclosure of the CPNI of the customers of the exiting carrier would enable the acquiring carrier to put each of the acquired customers on a plan that is compatible with such customers' calling patterns and service needs.

³ In May 2002, Sprint's local telephone company in Nevada acquired the customers located in its territory of OneSource, a reseller of local service in the State. OnceSource had filed for bankruptcy and Sprint agreed to acquire these customers at the request of the bankruptcy trustee. The bankruptcy court approved the acquisition. In September 2002, Sprint's local telephone companies in Florida and Tennessee were asked by the regulatory authorities in each of those States to acquire the customers located in their territories of Adelphia, a CLEC reselling Sprint's local service in those territories. Adelphia's parent company had filed for bankruptcy and Adelphia had notified Sprint that it should discontinue its provision of resold service to Adelphia on or about September 23. Although Adelphia had previously informed its customers that it was exiting the market and that they had to choose a new local service provider, many, if not most, of Adelphia's customers had not selected a new local service provider and were in jeopardy of losing their local service on September 23.

By taking these steps at the time of the transfer, the acquiring carrier may be able to save the acquired customers both time and money.⁴

Sprint does not, however, believe that the exiting carrier should be required to disclose to its customers that it is furnishing their CPNI to the acquiring carrier. Although the Commission states that the exiting carrier could make such disclosure "in the advance notice provided to customers acquired by the sale or transfer from another carrier in compliance with [the Commission's] authorization and verification (slamming) rules," *Third FNPRM* at ¶146, the fact is that the acquiring carrier and not the exiting carrier is the one required to provide such notice under the slamming rules. *See* 47 CFR §64.1120(e)(3). Moreover, the exiting carrier, especially one in bankruptcy, may be unable or unwilling to send such notifications to its customers. Thus, if a CPNI disclosure notification by the exiting carrier is a condition precedent for furnishing the CPNI to the acquiring carrier, it is unlikely that the acquiring carrier would be able to obtain the CPNI in a timely fashion, if at all, and a seamless transfer of customers would be difficult to achieve.⁵ In any case, it is Sprint's understanding that the privacy statements of many carriers already inform customers that their personally-identifiable information may be disclosed, if

⁴ The Commission asks whether carriers should be allowed to "sell CPNI as an asset." *Third FNPRM* at ¶147. Even if Section 222 can be read as authorizing carriers to treat their customers' CPNI as an asset which it could sell to the highest bidder -- and Sprint believes that there is no language in Section 222 that could be read as providing such authorization -- allowing an exiting carrier to sell its customers' CPNI to the carrier acquiring the customer base by default, at the insistence of State or federal regulators, or at the request of a trustee in bankruptcy, should not be permitted. In such instances, the acquiring carrier is not voluntarily purchasing the exiting carrier's customer base; it is taking the customers because of regulatory requirements or pursuant to court order. The exiting carrier should not be allowed to exploit these requirements/orders by seeking to obtain money for information the provision of which is necessary to ensure seamless transfers and is otherwise in the public interest.

⁵ It is difficult to understand what purpose such notice would serve. Presumably the notice would not enable the customer to object to the disclosure of his/her CPNI to the acquiring carrier since allowing for such objection would negate the reason why disclosure is necessary, *i.e.*, to enable the seamless transfer of the customer and thereby avoid disrupting the customer's phone service.

required, in connection with the sale or transfer of assets. Thus, a requirement that an exiting carrier inform its customers that their CPNI will be provided to another carrier to help effect a seamless transfer would appear to be redundant.

Although Sprint believes CPNI should, in essence, follow the customer from carrier to carrier without unnecessary regulation in order to ensure that the transition from one carrier to another should be as seamless as possible, Sprint does not believe that the acquiring carrier should "be deemed to have received" the customer CPNI approvals previously obtained by the exiting carrier. *Id.* Rather, the acquiring carrier should be required to obtain its own CPNI approvals from the newly acquired customers. Indeed, a prudent carrier will necessarily want to obtain its own approvals, rather than rely on the approvals of the exiting carrier, so as to avoid any disputes that it failed to comply with Section 222 and the Commission's Rules issued thereunder.

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October 21, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT CORPORATION** was sent by hand or by United States first-class mail, postage prepaid, on this the 21st day of October, 2002, to the parties on the attached list.


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